

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of License 10246 (Application 22802)

**ORDER APPROVING CHANGE IN POINTS OF
DIVERSION, CORRECTING THE PLACE OF USE,
AND ISSUING AMENDED LICENSE**

SOURCE: Russian River Underflow tributary to the Pacific Ocean

COUNTY: Mendocino

WHEREAS:

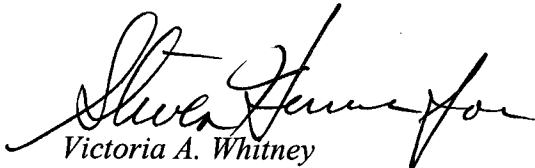
1. License 10246 was issued pursuant to permitted Application 22802 on May 9, 1974, and was recorded with the County Recorder of Mendocino County on May 14, 1974, in Book 962, Page 476. Recording of this license, and subsequent orders issued thereto, is prescribed by Water Code section 1650.
2. The Division of Water Rights (Division) record of ownership for License 10246 shows the current holder of the license as Miles S. Oswald, & Tracey Oswald.
3. A petition to change the description of the existing point of diversion, add an additional point of diversion, and correct the place of use was filed with the State Water Resources Control Board (SWRCB) on February 25, 2002, and the SWRCB has determined that good cause for such change has been shown. Public notice of the change was issued on May 24, 2002 and no protests were received.
4. The SWRCB has determined that the petition to change the description of the existing point of diversion, add an additional point of diversion, and correct the place of use does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water. Accordingly, License 10246 shall be amended to include the following specific changes:
 - a. Add a Point of Diversion
 - b. Correct the description of the existing Point of Diversion
 - c. Correct the description of the Place of Use
5. The SWRCB standard license terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for State Department of Fish and Game stream alteration agreement shall be updated or added to the amended license.
6. To document water diversion, a term requiring the installation and maintenance of in-line flow meter(s) shall be added to the amended license.

7. There is the possibility that buried archeological deposits may be present and accidental discovery could occur. In compliance with the California Environmental Quality Act, which states that a Lead Agency is required to make a provision for historical or unique archeological resources accidentally discovered during construction or operation of projects, a condition shall be included in the license requiring notification of the Chief of the Division of Water Rights if project activities uncover any buried archeological materials.
8. The SWRCB is the Lead Agency under the California Environmental Quality Act, Public Resources Code 21000 *et seq.* The Division, under delegated authority from the SWRCB, issued a Notice of Exemption for the Change Petition on the date of issuance of this Order.

THEREFORE, IT IS ORDERED:

The attached Amended License 10246 is issued, superseding former License 10246 issued on May 9, 1974. The priority of Amended License 10246 is June 5, 1967.

STATE WATER RESOURCES CONTROL BOARD



Victoria A. Whitney
Division Chief

Dated: **AUG - 4 2004**



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 22802
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PERMIT 15632

LICENSE 10246

THIS IS TO CERTIFY, That

Miles S. Oswald and Tracey Oswald
P.O. Box 189
Talmage, CA 95481-0157

have the right to the use of the waters of **Russian River Underflow** in **Mendocino County**
tributary to **Pacific Ocean**
for the purpose of **Irrigation use**.

Amended License 10246 supersedes the license originally issued on **May 9, 1974**, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (SWRCB), or its predecessor, and the terms of **Permit 15632**. The priority of this right dates from **June 5, 1967**. Proof of maximum beneficial use of water under this license was made as of **September 14, 1973** (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **1.1 cubic feet per second, to be diverted from April 15 to October 15 of each year. So long as there is no interference with other rights, junior as well as senior, licensee may increase the rate of diversion to a maximum of 1.91 cubic feet per second; provided that the total quantity diverted in any 30-day period does not exceed 66 acre-feet. The maximum amount diverted under this license shall not exceed 327 acre-feet per year.**

Unless a change is approved by the SWRCB, water used under this license may be diverted, rediverted, stored and used only as specified below:

THE POINTS OF DIVERSION OF SUCH WATER ARE LOCATED:

Well #1: By California Coordinates of 1927, Zone 2, North 525,228 feet and East 1,665,884 feet, being within the SE¼ of NE¼ of Projected Section 4, T14N, R12W, MDB&M

Well #4: By California Coordinates of 1927, Zone 2, North 524,776 feet and East 1,666,911 feet, being within the NW¼ of SW¼ of Projected Section 3, T14N, R12W, MDB&M

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

Irrigation of 74 acres located as follows:

17 acres within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Projected Section 3
20 acres within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Projected Section 3
6 acres within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Projected Section 3
6 acres within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Projected Section 3
13 acres within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Projected Section 4
12 acres within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Projected Section 4

all within T14N, R12W, MDB&M as shown on maps on file with the SWRCB.

Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division of Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Chief of the Division of Water Rights.

(0000215)

No water shall be diverted under this license unless the Licensee installs and maintains in-line flow meter(s), acceptable to the Division, capable of measuring the instantaneous rate and cumulative amount diverted to beneficial use under this license. Licensee shall maintain a record of the end-of-the-month meter readings and of the days of actual diversion, and shall submit these monthly records with the triennial report of licensee, or whenever requested by the Division.

(0060800)

(0090800)

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the SWRCB.

Licensee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by the SWRCB, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the SWRCB.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

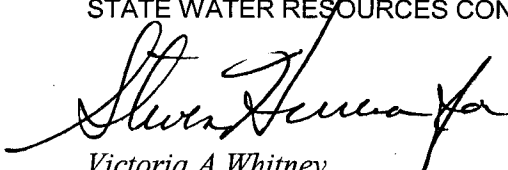
Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD



Victoria A Whitney
Division Chief

Dated: AUG - 4 2004